

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

ARLEEN KOSAK, individually and
on behalf of others similarly situated,

Plaintiff,

v.

NEW YORK MEDIA HOLDINGS,
LLC,

Defendant.

Case No. 2:22-cv-11850
Hon. Matthew F. Leitman

Magistrate Judge Elizabeth A.
Stafford

**DEFENDANT NEW YORK MEDIA HOLDINGS, LLC’S
MOTION FOR LEAVE TO FILE RESPONSE
TO NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant New York Media Holdings, LLC (“NYMH”) respectfully moves the Court for leave to file a response to Plaintiff’s Notice of Supplemental Authority (the “Notice”), filed July 28, 2023 (ECF No. 29).

1. In her Notice, Plaintiff encloses *Bozung v. Christianbook, LLC* (“*Bozung I*”), 1:22-cv-304, ECF No. 84 (W.D. Mich. July 14, 2023), argues that it is “relevant” to the “issue” of whether her proposed Second Amended Complaint “is futile”, and implies that this Court should find it persuasive here. ECF No. 29 at PageID.1911.

2. In view of Plaintiff’s arguments that the *Bozung II* is relevant to the question of whether her Second Amended Complaint is futile, Plaintiff would be

given an unfair advantage if NYMH was not permitted to provide an answer. NYMH respectfully seeks leave to submit a response to Plaintiff's Notice. The proposed Response to Notice of Supplemental Authority is attached hereto as Exhibit A.

3. Pursuant to Local Rule 7.1(a), Defendant's counsel certifies that on August 1, 2023, they communicated with Plaintiff's counsel, explaining the nature of the relief sought in this Motion and seeking concurrence in that relief. Plaintiff had not responded at the time of filing.

Dated: August 2, 2023

Respectfully submitted,

/s/ Kristen C. Rodriguez

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New York Media Holdings, LLC

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**BRIEF IN SUPPORT OF DEFENDANT
NEW YORK MEDIA HOLDINGS, LLC'S
MOTION FOR LEAVE TO FILE RESPONSE
TO NOTICE OF SUPPLEMENTAL AUTHORITY**

STATEMENT OF ISSUES PRESENTED

1. Whether NYMH should be granted leave to file a response to Plaintiff's arguments in her Notice of Supplemental Authority?

Defendant's Answer: Yes.

STATEMENT OF CONTROLLING/MOST APPROPRIATE AUTHORITY

The controlling and most appropriate authority for this Motion includes:

1. *United States v. Van*, No. 06-20491, 2021 WL 4962139 (E.D. Mich. Oct. 26, 2021).
2. *Tokarczyk v. A.G. Edwards & Sons, Inc.*, No. 08-12481, 2009 WL 1025392 (E.D. Mich. Apr. 15, 2009).
3. *Bozung v. Christianbook, LLC*, No. 1:22-cv-304, ECF No. 84 (July 14, 2023).

Defendant New York Media Holdings, LLC (“NYMH”) respectfully seeks leave to submit a response to Plaintiff’s Notice of Supplemental Authority (the “Notice”), filed July 28, 2023 (ECF No. 29).

ARGUMENT

In her Notice, Plaintiff encloses and implies that the Court should follow *Bozung v. Christianbook, LLC* (“*Bozung II*”), No. 1:22-cv-304, ECF No. 84 (July 14, 2023).

Plaintiff claims *Bozung II*—which allowed a plaintiff to use facts obtained through discovery to cure deficiencies in a complaint the court found insufficient to state a claim, *Bozung II*, ECF No. 84 at PageID.2042-43—is “relevant” to whether her proposed SAC is “futile”, suggesting that the Court should find *Bozung II* persuasive. This baseless assertion, if left unanswered, would provide Plaintiff an unfair advantage. Defendant respectfully seeks leave to submit a response to Plaintiff’s Notice. *See, e.g., Tokarczyk v. A.G. Edwards & Sons, Inc.*, No. 08-12481, 2009 WL 1025392, at *1 n.1 (E.D. Mich. Apr. 15, 2009) (denying a motion to strike a response and notice of supplemental authority but granting the opportunity to file a supplemental pleading to address newly raised arguments and caselaw); *United States v. Van*, No. 06-20491, 2021 WL 4962139, at *2 (E.D. Mich. Oct. 26, 2021) (allowing defendant to file a response to a notice of supplemental authority concerning an opinion entered after briefing to argue new opinion was wrongly

decided); *Smith v. Stellar Recovery, Inc.*, No. 15-cv-11717, 2017 WL 1336075, at *8 (E.D. Mich. Feb. 7, 2017) (allowing defendant to respond to plaintiff's notice of supplemental authority). The proposed Response to Notice of Supplemental Authority is attached hereto as Exhibit A.

CONCLUSION

For the foregoing reasons, NYMH respectfully requests that it be granted leave to file a response to Plaintiff's Notice of Supplemental Authority.

Dated: August 2, 2023

Respectfully submitted,

/s/ Kristen C. Rodriguez

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Counsel for Defendant

New York Media Holdings, LLC

Certificate of Service

I hereby certify that on August 2, 2023, a copy of the foregoing document was filed electronically and served by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

/s/ Kristen C. Rodriguez
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